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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/013,078 | 12/10/2001 | Antonio R. Bogat | 9975 | 1412 |

26884 7590 04/07/2005

PAUL W. MARTIN
LAW DEPARTMENT, WHQ-4
1700 S. PATTERSON BLVD.
DAYTON, OH 45479-0001

EXAMINER

O'CONNOR, GERALD J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3627

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/013,078

Applicant(s)

Bogat

Examiner

O'Connor

Art Unit

3627

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 8, 2005 (Election).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 10, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restriction

1. Applicant's election without traverse of the invention of Group III, claims 5 and 6, in the reply filed March 8, 2005 is hereby acknowledged.

2. Claims 1-4 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed March 8, 2005.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application *by application number and filing date* is required. See MPEP §§ 602.01 and 602.02. The oath or declaration is defective because the specification to which the oath or declaration is directed has not been adequately identified in the declaration (space for application number left blank). See MPEP § 601.01(a).

Claim Objections

4. The claims are objected to because of the following informality: it appears that steps "a," "c," "d," and "e" (claim 5) were intended to be steps --a--, --b--, --c--, and --d--, respectively, which change will be assumed in the remainder of this action. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e)¹ the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Mergenthaler (US 4,779,706).

Mergenthaler discloses a method of detecting misappropriation of goods in a self-checkout lane in a store, the self-checkout lane having an incoming goods path and a goods collection zone, and goods being passed, in service, from the incoming goods path into the goods collection zone; the incoming goods path including a product scanner electrically coupled to a

¹ The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) apply to the examination of this application as the application being examined was (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) as amended by the AIPA (post-AIPA 35 U.S.C. 102(e)).

processor, and the goods collection zone including a weighing scale electrically coupled to the processor; the method being performed by a processor and comprising the steps:

- (a) receiving input from the product scanner identifying goods introduced by a customer into the incoming goods path;
- (b) calculating, by referring to a record of product weights, a total weight value representative of the total weight of the goods introduced into the incoming goods path;
- (c) receiving input from the weighing scale specifying the total weight of the goods once received in the goods collection zone; and,
- (d) comparing the said total weight value with the said total weight of the goods and calculating any discrepancy between the said weights.

Regarding claim 6, the method of Mergenthaler further comprises notifying store personnel or operating an alarm if the discrepancy is greater than a predetermined value.

Conclusion

- 7. The prior art made of record and not relied upon is considered pertinent to the disclosure.
- 8. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is **(703) 746-3976**.

PLEASE TAKE NOTICE that on April 14, 2005 the examiner's telephone and facsimile numbers will be changing, to (571) 272-6787 and (571) 273-6787, respectively.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at (703) 308-5183, or, beginning April 14, 2005, at (571) 272-6788.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (not changing). Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

March 31, 2005

A handwritten signature in black ink, appearing to read "Gerald J. O'Connor", followed by the date "(3-31-05)" in parentheses.

Gerald J. O'Connor
Patent Examiner
Group Art Unit 3627